

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

ELIZABETH SINES, SETH WISPELWEY,
MARISSA BLAIR, APRIL MUÑIZ,
MARCUS MARTIN, NATALIE ROMERO,
CHELSEA ALVARADO, JOHN DOE, and
THOMAS BAKER,

Plaintiffs,

v.

JASON KESSLER, et al.,

Defendants.

Civil Action No. 3:17-cv-00072-NKM

JURY TRIAL DEMANDED

**PLAINTIFFS' SUPPLEMENTAL BRIEF IN FURTHER SUPPORT OF
THEIR MOTIONS FOR EVIDENTIARY SANCTIONS AGAINST
DEFENDANT ELLIOTT KLINE A/K/A ELI MOSLEY**

Plaintiffs respectfully file their seventh supplemental brief in further support of their April 3, 2019, Motion for Sanctions, ECF No. 457 (“First Sanctions Motion”), and December 6, 2019, Motion for Evidentiary Sanctions, ECF No. 601 (“Second Sanctions Motion”), after learning this week about yet another lie told under oath by Defendant Elliott Kline a/k/a Eli Mosley. Specifically, deposition testimony elicited this week from Kline’s ex-girlfriend confirms, contrary to Kline’s sworn testimony, that he owned and used a desktop computer with three monitors in the summer and fall of 2017. Kline has testified that this computer, which he swore he did not possess or use during 2017, is “utterly destroyed.” (Nov. 25, 2019 Hearing Transcript 34:10, ECF No. 600.) Plaintiffs will never uncover the trove of evidence from that source. Accordingly, evidentiary sanctions are the only way to remedy Kline’s misconduct.

In his August 7, 2019, deposition, Kline testified that he owned a computer in 2017 but “basically what happened with me was I had gotten let go of my job in late 2016 and I moved

down to South Carolina with my girlfriend at the time. I wasn't able to bring any of my stuff, which included my computer and lots of other stuff.” (Kline Dep. 112:5-13; *see id.* at 396:5-14 (“I think it was 2017 when I moved there. . . . [E]ither the beginning of 2017 or late 2016.”)¹ When asked “why were you not able to bring your computer,” Kline testified that “I couldn't fit all of my stuff in the car. I just brought my clothes and stuff like that.”² (Kline Dep. 112:18-22.) During his first civil contempt hearing on November 25, 2019, Kline again testified under oath about that computer. Kline testified that “when I had moved to North Carolina for some time, I had done that moving, we had dropped the computer, and it basically fell apart. This is well before Unite the Right was planned, number one or two, or anything like that.” (Nov. 25, 2019 Hearing Transcript 34:1-4, ECF No. 600.) During Kline's second civil contempt hearing, Kline testified, “As far as the computer goes that was mentioned, that computer, as I had said at the deposition in August, is a computer that I used before I was a member of the Alt-right. The last time I had used it was in 2016” (Dec. 16, 2019 Hearing Transcript 11:21-24, ECF No. 609.)

On March 9, 2020, Plaintiffs deposed [REDACTED], Kline's ex-girlfriend with whom he lived from June to November 2017. (Kline Dep. 59:17-60:11; [REDACTED] Dep. 86:2-87:16.)³ [REDACTED] testified unequivocally that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] When asked [REDACTED]

¹ Excerpts of the transcript of Mr. Kline's deposition are attached hereto as Exhibit A and referred to throughout this brief as “Kline Dep.”

² Kline also testified that he had not gotten another computer once he was in South Carolina. (Kline Dep. 114:10-12.)

³ Excerpts of the transcript of [REDACTED] deposition are attached hereto as Exhibit B and referred to throughout this brief as “[REDACTED] Dep.”

[REDACTED] testified, [REDACTED] ([REDACTED] Dep. 105:17-22.) She explained,

[REDACTED]

[REDACTED] ([REDACTED] Dep. 105:25-106:4.) When asked [REDACTED]

[REDACTED] testified, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ([REDACTED] Dep. 106:16-25.)

[REDACTED] further testified that [REDACTED]

([REDACTED] Dep. 107:15.) In fact, she testified that [REDACTED]

[REDACTED] ([REDACTED] Dep. 107:15-

108:3 (emphasis added).) Contemporaneous posts on Discord by both Kline and [REDACTED]

confirm [REDACTED] testimony that Kline had and used a computer in the months leading up to

Unite the Right and demonstrate that Kline lied under oath to Plaintiffs and the Court about this

source of discovery. (See Ex. C ([REDACTED] Dep. Ex. 5) [REDACTED]

[REDACTED]); Kline Dep. Ex. 34, ECF No. 566-6 (“an

hour after my video came out with the kike and the sign he commented on it with ‘Echo

American?’ I have the screen cap on my home PC”); Kline Dep. Ex. 35, ECF No. 566-7 (“if he

comes in and i have to defend myself all they have to do is look through my computer and im

fucked so not really a good option”); Kline Dep. Ex. 36, ECF No. 566-9 (“well its not a huge deal

cause the phone is backed up on my PC”); Kline Dep. Ex. 38, ECF No. 566-8 (“they share the wall

with my computer”); Ex. D (Kline Discord chat, 5/23/2017) [REDACTED]

[REDACTED]

[REDACTED]; Ex. E (Discord chats, 6/2/2017) [REDACTED]
 [REDACTED]; Ex. F (Kline Discord chat, 6/9/2017) [REDACTED]
 [REDACTED]; Ex. G (Kline Discord chat, 6/13/2017) [REDACTED]; Ex. H (Kline
 Discord chat, 6/21/2017) [REDACTED]; Ex. I (Kline Discord chat,
 7/5/2017) [REDACTED]
 [REDACTED]; Ex. J (Kline Discord chat, 7/6/2017)
 [REDACTED]; Ex. K (Kline Discord
 chat, 7/8/2017) [REDACTED].)⁴ [REDACTED] unequivocal and unimpeached testimony
 that Mr. Kline possessed and used a computer throughout the summer and fall of 2017 confirms
 what Mr. Kline's own Discord posts convincingly establish: Mr. Kline possessed and used a
 computer to plan Unite the Right and has consistently lied about that fact under oath throughout
 this litigation.

Given Kline's seemingly pathological inability to testify truthfully and his misconduct in
 discovery, Plaintiffs respectfully reiterate their request that the Court grant the First and Second
 Sanctions Motions. Specifically, Plaintiffs request that the Court (1) deem the facts listed in the
 Sanctions Motions established; (2) deem authentic for purposes of Rule 901 of the Federal Rules
 of Evidence any documents that Plaintiffs have a good-faith basis to believe that Kline created,
 including all documents from the social media accounts listed in the Sanctions Motions, as well as

⁴ Plaintiffs showed Kline many of these Discord posts during his deposition and his first
 civil contempt hearing and his explanations for his posts ranged from the illogical to the absurd.
 For example, in response to questioning about a Discord post from summer 2017 in which Kline
 posted that "all they have to do is look through my computer and I am fucked," Kline Dep. Ex. 35,
 ECF No. 566-7, Kline testified that "the only thing I can think of I am referencing there is my
 computer screen. I had a computer screen that I would – at my girlfriend's house, we didn't have
 a TV. We used a computer screen to watch Netflix and stuff like that on." (Kline Dep. 402:11-
 16.)

any photographs taken by or depicting Kline; and (3) instruct the jury that Kline chose to intentionally withhold his documents, and that the jury may draw adverse inferences from that fact, including that Kline chose to withhold such documents because he was aware that such documents contained evidence that Kline conspired to plan racially motivated violence at Unite the Right.

Dated: March 13, 2020

Respectfully submitted,

/s/ Robert T. Cahill

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CERTIFICATE OF SERVICE

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I further hereby certify that on March 13, 2020, I also served the following non-ECF participants, via electronic mail, as follows:

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